

ATTACHMENT P

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ERIK TRIMBLE, individually and on) Case No.
behalf of all others similarly situated,)

) **CLASS ACTION**
Plaintiff,)

) **COMPLAINT FOR VIOLATIONS**
vs.) **OF:**

) 1. NEGLIGENT VIOLATIONS OF
LIBERTY ACTION GROUP PAC;) THE TELEPHONE CONSUMER
DOES 1 through 10, inclusive,) PROTECTION ACT [47 U.S.C.
) §227 ET SEQ.]
) 2. WILLFUL VIOLATIONS OF THE
Defendant(s).) TELEPHONE CONSUMER
) PROTECTION ACT [47 U.S.C.
) §227 ET SEQ.]

) **DEMAND FOR JURY TRIAL**

Plaintiff, ERIK TRIMBLE (“Plaintiff”), on behalf of himself and all others
similarly situated, alleges the following upon information and belief based upon
personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action for himself and others similarly situated
seeking damages and any other available legal or equitable remedies resulting from

1 the illegal actions of LIBERTY ACTION GROUP PAC (“Defendant”), in
2 negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular
3 telephone in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227
4 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

5 **JURISDICTION & VENUE**

6 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
7 a resident of California, seeks relief on behalf of a Class, which will result in at
8 least one class member belonging to a different state than that of Defendant, a
9 company with its principal place of business and State of Incorporation in Florida
10 state. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of
11 the TCPA, which, when aggregated among a proposed class in the thousands,
12 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both
13 diversity jurisdiction and the damages threshold under the Class Action Fairness
14 Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

15 3. Venue is proper in the United States District Court for the Northern
16 District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a)
17 because Defendant does business within the state of California and Plaintiff resides
18 within this District.

19 **PARTIES**

20 4. Plaintiff, ERIK TRIMBLE (“Plaintiff”), is a natural person residing in
21 San Francisco, California and is a “person” as defined by 47 U.S.C. § 153 (39).

22 5. Defendant, LIBERTY ACTION GROUP PAC (“Defendant” or
23 “DEFENDANT”), is a revenue management company and is a “person” as defined
24 by 47 U.S.C. § 153 (39).

25 6. The above named Defendant, and its subsidiaries and agents, are
26 collectively referred to as “Defendants.” The true names and capacities of the
27 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
28 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious

1 names. Each of the Defendants designated herein as a DOE is legally responsible
2 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
3 Complaint to reflect the true names and capacities of the DOE Defendants when
4 such identities become known.

5 7. Plaintiff is informed and believes that at all relevant times, each and
6 every Defendant was acting as an agent and/or employee of each of the other
7 Defendants and was acting within the course and scope of said agency and/or
8 employment with the full knowledge and consent of each of the other Defendants.
9 Plaintiff is informed and believes that each of the acts and/or omissions complained
10 of herein was made known to, and ratified by, each of the other Defendants.

11 **FACTUAL ALLEGATIONS**

12 8. Beginning in or around August 2016, Defendant contacted Plaintiff on
13 his cellular telephone ending in -5080, in an effort to sell or solicit its services.
14 Defendant called, including but not limited to around August 8, 2016 at 9:32 a.m.,
15 August 12, 2016 at 3:19 p.m., August 15, 2016 at 9:41 a.m., August 16, 2016 at
16 4:35 p.m., and August 17, 2016 at 10:55 a.m. Defendant often called from
17 telephone numbers (646) 604-9033, (202) 813-9371, (646) 600-8266, and (202)
18 599-9203.

19 9. Defendant used an “automatic telephone dialing system”, as defined
20 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to sell or solicit its
21 business services.

22 10. Defendant’s calls constituted calls that were not for emergency
23 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

24 11. Defendant’s calls were placed to telephone number assigned to a
25 cellular telephone service for which Plaintiff incurs a charge for incoming calls
26 pursuant to 47 U.S.C. § 227(b)(1).

27 12. Plaintiff is not a customer of Defendant’s services and has never
28 provided any personal information, including his cellular telephone number, to

1 Defendant for any purpose whatsoever. In addition, on at least one occasion,
2 Plaintiff answered the telephone and told Defendant to stop calling him.
3 Accordingly, Defendant never received Plaintiff's "prior express consent" to
4 receive calls using an automatic telephone dialing system or an artificial or
5 prerecorded voice on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

6 7 CLASS ALLEGATIONS

8 13. Plaintiff brings this action on behalf of himself and all others similarly
9 situated, as a member of the proposed class (hereafter "The Class") defined as
10 follows:

11 All persons within the United States who received any
12 telephone calls from Defendant to said person's cellular
13 telephone made through the use of any automatic
14 telephone dialing system or an artificial or prerecorded
15 voice and such person had not previously consented to
16 receiving such calls within the four years prior to the
17 filing of this Complaint

18 14. Plaintiff represents, and is a member of, The Class, consisting of All
19 persons within the United States who received any telephone calls from Defendant
20 to said person's cellular telephone made through the use of any automatic telephone
21 dialing system or an artificial or prerecorded voice and such person had not
22 previously not provided their cellular telephone number to Defendant within the
23 four years prior to the filing of this Complaint.

24 15. Defendant, its employees and agents are excluded from The Class.
25 Plaintiff does not know the number of members in The Class, but believes the Class
26 members number in the thousands, if not more. Thus, this matter should be
27 certified as a Class Action to assist in the expeditious litigation of the matter.

28 16. The Class is so numerous that the individual joinder of all of its

members is impractical. While the exact number and identities of The Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes and thereon alleges that The Class includes thousands of members. Plaintiff alleges that The Class members may be ascertained by the records maintained by Defendant.

17. Plaintiff and members of The Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and Class members via their cellular telephones thereby causing Plaintiff and Class members to incur certain charges or reduced telephone time for which Plaintiff and Class members had previously paid by having to retrieve or administer messages left by Defendant during those illegal calls, and invading the privacy of said Plaintiff and Class members.

18. Common questions of fact and law exist as to all members of The Class which predominate over any questions affecting only individual members of The Class. These common legal and factual questions, which do not vary between Class members, and which may be determined without reference to the individual circumstances of any Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant made any call (other than a call made for emergency purposes or made with the prior express consent of the called party) to a Class member using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;
- b. Whether Plaintiff and the Class members were damages thereby, and the extent of damages for such violation; and
- c. Whether Defendant should be enjoined from engaging in such conduct in the future.

19. As a person that received numerous calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, without

1 Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The
2 Class.

3 20. Plaintiff will fairly and adequately protect the interests of the members
4 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
5 class actions.

6 21. A class action is superior to other available methods of fair and
7 efficient adjudication of this controversy, since individual litigation of the claims
8 of all Class members is impracticable. Even if every Class member could afford
9 individual litigation, the court system could not. It would be unduly burdensome
10 to the courts in which individual litigation of numerous issues would proceed.
11 Individualized litigation would also present the potential for varying, inconsistent,
12 or contradictory judgments and would magnify the delay and expense to all parties
13 and to the court system resulting from multiple trials of the same complex factual
14 issues. By contrast, the conduct of this action as a class action presents fewer
15 management difficulties, conserves the resources of the parties and of the court
16 system, and protects the rights of each Class member.

17 22. The prosecution of separate actions by individual Class members
18 would create a risk of adjudications with respect to them that would, as a practical
19 matter, be dispositive of the interests of the other Class members not parties to such
20 adjudications or that would substantially impair or impede the ability of such non-
21 party Class members to protect their interests.

22 23. Defendant has acted or refused to act in respects generally applicable
23 to The Class, thereby making appropriate final and injunctive relief with regard to
24 the members of the California Class as a whole.

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27 **FIRST CAUSE OF ACTION**

28 **Negligent Violations of the Telephone Consumer Protection Act**

47 U.S.C. §227 et seq.

24. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-23.

25. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 *et seq.*

26. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

27. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

28. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-23.

29. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 *et seq.*

30. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

31. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B); and
- Any and all other relief that the Court deems just and proper.

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SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C); and
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 31st day of August, 2016.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff